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QUESTION OF THE REALIZATION IN ALL COUNTRIES OF THE ECONOMIC, SOCIAL AND CULTURAL RIGHTS CONTAINED IN THE UNIVERSAL DECLARATION OF HUMAN RIGHTS AND IN THE INTERNATIONAL COVENANT ON ECONOMIC, SOCIAL AND CULTURAL RIGHTS, AND STUDY OF SPECIAL PROBLEMS WHICH THE DEVELOPING COUNTRIES FACE IN THEIR EFFORTS TO ACHIEVE THESE HUMAN RIGHTS

Written statement submitted by Human Rights Advocates, a non-governmental organization in special consultative status

The Secretary-General has received the following written statement, which is circulated in accordance with Economic and Social Council resolution 1296 (XLIV).

[3 March 1998]

Adverse effects of the illicit movement and dumping of toxic and dangerous products and wastes on the enjoyment of human rights

1. Human Rights Advocates (HRA), in conjunction with the Natural Heritage Institute (NHI), 1/ submit this written statement to the Commission on Human Rights.

2. At the request of the Commission, Ms. Fatma Zhora Ksentini was appointed by resolution 1995/81 as Special Rapporteur to study and recommend solutions to the adverse effects of the illicit transport and mishandling of toxic substances on the enjoyment of human rights. Pursuant to her mandate the Special Rapporteur has submitted a preliminary report (E/CN.4/1996/17) and two progress reports (E/CN.4/1997/19 and E/CN.4/1998/10 and Add.1-2). The reports document repeated instances of the link between the illicit movement and mishandling of toxics and violations of human rights to life and health. The Special Rapporteur's mandate expires in 1998.

3. The illicit transport and mishandling of toxic and dangerous products continue to endanger the human rights of many individuals, particularly those in developing countries. HRA/NHI have been documenting instances of human rights abuses caused by the lack of standards or the inability to enforce the existing standards intended to regulate the transport and handling of toxic substances. The human rights impacted by these instances go far beyond the fundamental human rights to life and health. They also violate a person's right to safe working and living conditions, to safe food and water supplies, and the right to information and participation. HRA/NHI continue to document instances that demonstrate the ongoing violations of human rights including some more recent examples:

(a) HRA/NHI have become aware of information included in a case being filed against a United States company operating in Africa. The company allegedly has a long-standing practice of releasing drums to the local community that were previously used to transport toxic wastes. The drums are contaminated with residues of various hazardous materials, including hydrochloric acid and methanol, both known to have short and long-term health effects. Members of the community use the drums as water receptacles, causing a serious and widespread health hazard. There has been at least one accident causing serious injury resulting from this practice of which we are aware. Although internal recommendations were made to cease releasing the drums and sanitize and crush them before disposal, these recommendations were not implemented. One employee was fired after challenging the practice of releasing the contaminated drums. 2/

(b) The Inter-American Commission on Human Rights released a report in 1997 that included information on the improper handling and disposal of toxic wastes and crude oil in the Oriente region of Ecuador. The oil exploitation activities by the Government and international investors have contaminated water, soil and air where the Huaorani people live. Various studies and surveys cited report significantly higher rates of spontaneous abortions, gastrointestinal problems, headaches, nausea and fever, skin diseases, infant mortality and diarrhea, risk of cancer and other grave illnesses. The report estimates that since 1972, over 30 billion gallons of toxic wastes and crude oil have been discharged into the land and waterways of the Oriente. 3/

4. The international community has made some progress in controlling the illicit movement and mishandling of toxics, most significantly by the adoption of the Basel and Bamako Conventions. The long-term goals of the conventions are to promote reduction of toxic waste output, disposal near generation, and environmentally sound management of toxic products. While these conventions are bold steps in the right direction, they do not fully address violations of human rights associated with the illicit transport and mishandling of toxics. In particular, the conventions are limited as to who and what their obligations reach. Some of those limitations include: the United States, one of the largest generators of toxic substances, has not ratified the Basel Convention; the Bamako Convention has not yet entered into force; enforcement efforts are plagued with difficulties including fraudulent documentation and reclassification of toxic substances, inability to detect and manage toxic substances due to lack of technology, and the slow development of liability schemes and other enforcement mechanisms. The result is that toxics are still transported and mishandled and continue to impact the surrounding human communities. Additionally, the obligations of both conventions are not invoked unless the toxic substances have moved from State to State and they do not directly impact the activities of transnational corporations, the predominant producers, transporters and handlers of toxics.

5. In the light of these continuing concerns and in recognition of the obstacles reported by the Special Rapporteur in carrying out her mandate, HRA/NHI recommend that the Commission renew the mandate of the Special Rapporteur on the adverse impacts of the illicit movement and mishandling of toxic substances for a period of at least two years. HRA/NHI recommends that the renewed mandate include the following objectives:

(a) To continue working under the original mandate to gather information on specific incidents, such as those reported here, and produce an annual list of countries and transnational corporations engaged in the illicit transport and mishandling of toxic and dangerous products, with particular attention to instances that fall outside the scope of the Basel Convention. The Commission is encouraged to commit sufficient funding for the completion of at least two on-site visits to obtain more developed information and to determine the obstacles to developing more consistent and comprehensive reporting mechanisms of human rights violations;

(b) The Special Rapporteur should also focus particular attention on the role of transnational corporations and their participation in human rights abuses that result from illicit movement and mishandling of toxics. The international community has been significantly challenged in impacting the behaviour of transnational corporations through other instruments, but the original mandate of the Special Rapporteur specifically requested information on the activities of transnational corporations. The Special Rapporteur could consider conducting a voluntary survey directed to transnational corporations involved in the generation, transport and disposal of toxic and dangerous products. The survey could ascertain the level of awareness of international human rights obligations, the standards set out in the draft code of conduct on transnational corporations, request information regarding innovative mission/policy statements, business practices, training programmes, evaluation methods or community participation programmes that are supportive of protecting human rights, and provide an opportunity to report their human

rights record. The Special Rapporteur should also study the potential impacts from the development of the Multilateral Agreement on Investment 4/ on the ability of local communities and States to enforce and strengthen existing international human rights, environmental and social protections;

(c) To continue and expand coordination with the Secretariat for the Basel Convention to facilitate and ensure that the human rights obligations inherent in toxic transport and handling are integral to the development of international standards and enforcement. This expanded cooperation offers unique opportunities for mutual support between the environmental and human rights bodies and will prevent duplicative efforts. In particular, the mandate should focus on determining potential specific avenues of cooperation between the Commission and the activities of the Secretariat. HRA/NHI recommends the following as potential areas of coordination:

(i) Work with the Ad Hoc Working Group of Legal and Technical Experts as they prepare a draft Protocol on Liability and Compensation for damage resulting from illicit transport of hazardous wastes. 5/ Consider cmpensating human rights violations as damages or developing a concurrent human rights penalty and fund mechanism. Additionally, recommend specific activities that a compensation fund could help address; for instance, further research on health impacts of particular toxics or the development and support of public education programmes to facilitate participation in planning, monitoring and protecting human rights and environmental impacts of toxics;

(ii) Work with the Technical Working Group as they develop Regional Centres for Training and Technology Transfer. 6/ Consider the possibility of including a training module on human rights obligations and impacts from toxics for government officials, customs officers and other enforcement officials responsible for the obligations of the Basel Convention. The Special Rapporteur could also consider developing a joint community outreach resource packet made available through the Regional Centres to increase the awareness of both the human rights and environmental impacts in communities where toxics are handled and disposed;

(iii) Work with the Technical Working Group as they develop the Illegal Traffic Report Form. 7/ Consider the inclusion or development of a concurrent human rights report form to begin the recording and tracking of human rights violations in conjunction with the reporting of environmental violations. This will raise awareness of the association between toxic mishandling and potential human rights violations and provide the international community with a more consistent and comprehensive mechanism to track the impacts of toxic mishandling which includes both environmental and human rights violations;

(d) HRA/NHI supports the Special Rapporteur's recommedation to develop specific joint projects between the Officer of the High Commissioner for Human Rights, UNEP, the Secretariat for the Basel Convention, the Organization of African Unity and others (E/CN.4/1998/10/Add.2, para. 62). The continued mandate of the Special Rapporteur will be essential in assisting the initiation and development of effective projects.

Notes

1/ Natural Heritage Institute is a non-profit, non-governmental organization which provides counselling and advocacy for public interest organizations and government institutions on natural resource problems, including international conservation and human rights.

2/ Case pending in United States District Court.

3/ Report on the Situation of Human Rights in Ecuador, Organization of American States, Inter-American Commission on Human Rights, OEA/Ser.L/V/II.96 Doc.10 rev.1, 24 April 1997.

4/ David Rowan, "Analysis: Corporations v. States: Meet the new world government - These multinationals will be able to take governments to court under a worrying new agreement to be finalized next week. What happened to democracy?", The Guardian Home Page, WL 3078560, 13 February 1998.

5/ Outcome of the work of the Ad Hoc Working Group of Legal and Technical Experts to consider and develop a Draft Protocol on Liability and Compensation for Damage Resulting From Transboundary Movements of Hazardous Wastes and Their Disposal (UNEP/CHW.4/12), Fourth Meeting of the Conference of Parties to the Basel Convention, Malaysia, 23-27 February 1998. The latest version of the draft protocol is contained in document UNEP/CHW.1/WG.1/5 of 23 May 1997.

6/ See UNEP/CHW.4/11 and 14.

7/ Ibid.